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Date: December 14, 2009

/Stacey Bussey/

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

Applicant(s): Gregory J. Mesaros

Serial No: 09/922,884

Filing Date: August 6, 2001

Examiner: Cuong H. Nguyen

Art Unit: 3661

Title: E-COMMERCE VOLUME PRICING

**Mail Stop Reply Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450**

REPLY BRIEF

Dear Sir:

Appellant's representative submits this Reply Brief in response to the Examiner's Answer mailed October 14, 2009. In the event any additional fees may be due and/or are not covered by the credit card, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1063 [GEDP101USE].

REMARKS

Claims 1-19, 43-47, and 57-76 are currently pending in the subject application and are presently under consideration.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments herein. In particular, the following comments briefly address deficiencies contended in the Examiner's Answer to appellants' Appeal Brief.

I. Rejection of Claims 1-19, 43-47 and 57-76 Under 35 U.S.C. §103(a)

Claims 1-19, 43-47 and 57-76 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pallakoff (US 6,269,343), in view of Shavit, *et al.* (US 4,799,756, hereinafter referred to as "Shavit"). It is respectfully requested that this rejection be reversed for at least the following reasons. The art of record fails to disclose or suggest all features of the respective claims.

In particular, representative claim 1 recites in part, "a logistics component that ... determines a shipping price for the product ... the shipping price being determined based at least in part upon *the subset of buyers sharing a shipping method...*" In contrast, the rejection analysis repeatedly argues that Shavit discloses the concept of "sharing shipping costs." However, it is readily apparent that "sharing shipping *costs*" is materially distinct from determining a shipping price based on "buyers sharing a shipping *method*."

In particular, while Shavit does disclose that freight costs can be shared, no art of record discloses or reasonably suggests a logistics component that "*determines a shipping price for the product*" as a function of "buyers sharing a shipping method". That is, Shavit alludes to the concept of sharing freight costs, but makes no determination of the freight costs for a product. Furthermore, Shavit discloses that in order to effectuate freight costs sharing, a supplier *may advertise* the available space. In particular, a bulletin board component that supports *advertising* available space in order to share freight costs is materially distinct from a *logistics component* that *determines a shipping price ... based at least in part upon the subset of buyers sharing a shipping method*. In addition, Shavit expressly relates to *suppliers* sharing freight costs, whereas the instant claims recite *buyers* sharing a shipping *method*.

All combinations of art of record are materially deficient with respect to disclosing or suggesting such features. Furthermore, the rejection analysis fails to consider many relevant

features, including at least (1) the inherent determination of the shipping method for the plurality of buyers; (2) the inherent determination that a subset of buyers are sharing a shipping method; and (3) a determination of the shipping price for a subset of buyers from aggregate orders, wherein such a determination is based upon a subset of buyers sharing a shipping method. Such claimed features are ignored by the rejection analysis because the claims are not considered in their entireties, but rather only in a piecemeal fashion. For instance, rather than appreciating that orders for a product are aggregated in connection with the determination of a shipping price for the product...based at least in part upon the subset of buyers sharing a shipping method, the rejection analysis seeks only to show that orders can be aggregated (Pallakoff) and, entirely independently, that freight costs can be shared (Shavit or “delivery lunch”). Yet, even if such analysis were germane, the fact that Pallakoff discloses order aggregation and Shavit discloses sharing of freight costs, still no reference or combination thereof discloses or suggests the shipping price being determined based at least in part upon *the subset of buyers sharing a shipping method*. Accordingly, this rejection of independent claims 1 and 43, as well as all claims that depend there from, should be reversed.

In addition, the Examiner’s Answer introduces a new argument. Specifically, at pages 6 and 7 as well as pages 17 and 18, it is suggested that:

The language in claim 1 could be pretty broad because “at least in part upon the subset of buyers” means just only one buyer (e.g., a subset of buyers is five, claimed language says “at least in part” = one buyer.

In response, Appellant’s representatives note this new argument misconstrues the “at least in part” modifier. In particular, the argument suggests that the language of claim 1, which recites, “the shipping price being determined *based at least in part upon the subset* of buyers sharing a shipping method” actually means that only a part of the subset of buyers shares a shipping method, and since it is only a part of this subset, it could be only one buyer. However, the language does not recite, “based upon at least a part of the subset” but rather states, “based at least in part upon the subset,” which clearly contravenes the suggestion of this new argument. “Based at least in part upon the subset,” can be representative of the fact that the shipping price being determined is based upon the subset of buyers sharing a shipping method, yet the “based at least in part” portion can imply the shipping price can be based upon other factors as well (hence

based at least in part upon, not based upon at least part of). It is unclear how such language can be interpreted to mean what is suggested by the new argument, that is, that “based at least in part upon the subset” means instead only a part of the subset. Moreover, even if such an interpretation of the language is found to be permissible, appellant’s representatives submit that the concept of “sharing” implies multiple parties, negating this new argument. Hence, even if the claim language is interpreted as a part of the subset of buyers instead of based at least in part upon the subset of buyers, then the notion that a part of the subset of buyers can be interpreted as just one buyer appears to be incompatible with the claims language when considered in the whole, since there would then be no other party with whom to share the shipping method.

For at least the aforementioned reasons, it is respectfully requested that all rejections of the claims should be reversed.

CONCLUSION

For at least the above reasons, the claims currently under consideration are believed to be patentable over the cited reference. Accordingly, it is respectfully requested that the Examiner's rejections be reversed.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [GEDP101USE].

Respectfully submitted,

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